

Michigan Judicial Institute

Friend of the Court: Custody Evaluators Seminar

January 23-24, 2002
Sheraton Lansing Hotel
Lansing, Michigan

Workshop Session 2-B

Domestic Violence & Personal Protection Orders

Faculty

Ms. Carol Hackett-Garagiola
Legal and Policy Director
Michigan Domestic Violence
Prevention & Treatment Board
Family Independence Agency
235 S. Grand Ave., Suite 513
Lansing, MI 48909

Ms. Joyce Wright
Director of Training
Michigan Domestic Violence
Prevention & Treatment Board
Family Independence Agency
235 S. Grand Ave., Suite 513
Lansing, MI 48909



Michigan Judicial Institute
222 N. Washington Square, Suite 220
Lansing, Michigan 48933
517/334-7805

© 2002 Michigan Judicial Institute

Personal Protection Orders Adult Respondent

Carol Hackett Garagiola, J.D.
Legal and Policy Director
Michigan Domestic Violence Prevention and Treatment Board
October 1, 2001

I. INTRODUCTION

A. What is a PPO?

1. Court *order* prohibiting conduct.
2. Distinguish PPO (*order* prohibiting or mandating conduct) from criminal law (*law* prohibiting or mandating conduct).
3. Distinguish violation of PPO (*contempt*) from violation of criminal law (*crime*).
4. Conduct which violates PPO may also constitute violation of criminal law.
5. Violator of PPO, age 17 years or older, is subject to *contempt* powers of court:
 - a) *criminal contempt* (a person who refuses or fails to comply with a PPO is subject to the *criminal* contempt powers of the court. MCL 600.2950(23); MCL 600.2950a(20)).
 - past violation
 - vindicate court's authority
 - punitive
 - punishable by not more than 93 days and/or \$500
 - b) also *civil contempt* (a PPO issued under this section is *also enforceable* under MCL 600.1701 to 600.1745; MCL 600.2950(26); MCL 600.2950a(24)).
 - Respondent in violation at time of proceeding
 - Restore status quo
 - Coercive or compensatory
 - Punishable by imprisonment until compliance with court order or inability to do so, a maximum \$250, plus damages to injured party for actual losses. MCL 600.1721
 - c) The criminal penalty provided for violation of PPO may be imposed in addition to any penalty imposed for any other criminal offense arising from same conduct. MCL 600.2950(23); MCL 600.2950a (20).

B. Evolution of PPOs

1. Historical Perspective:
 - a) Criminal justice system response to domestic violence: "private matter" (past) v. "crime" (present).
 - b) Restraining orders, injunctions used to obtain enforcement of criminal laws in domestic violence situations. (Need for *order* prohibiting "assaulting," "beating," "molesting.")
2. Pre-1994 Restraining Orders, Injunctions:
 - a) Limits on conduct to be restrained/enjoined.
 - b) Unenforceable unless/until served.
 - c) Costly, complicated, limited availability.

- C. PPOs as tool, in addition to enforcement of criminal laws, to protect victims of domestic violence and stalking.
- Prevention

II. ISSUANCE OF PPO AGAINST ADULT RESPONDENT

A. Types of PPOs

Distinguish *domestic relationship PPO* (MCL 600.2950) from *non-domestic relationship stalking PPO*. (MCL 600.2950a).

1. *Domestic relationship PPO*

a) Petitioners who may obtain a domestic relationship PPO

A petitioner who shares one of the following relationships with the respondent may obtain a domestic relationship PPO against the respondent.

- Spouse
 - Former spouse
 - Person with whom victim is residing or has resided in same household
 - Person with whom victim has had child in common
 - Person with whom victim has or has had dating relationship
- MCL 600.2950(1)

("Dating Relationship" means frequent, intimate associations primarily characterized by the expectation of affectional involvement. The term does not include a casual relationship or an ordinary fraternization between two individuals in a business or social context.)

b) Behaviors that may be restrained by a domestic relationship PPO

- Entering onto premises.
- Assaulting, attacking, beating, molesting, or wounding a *named individual*.*
- Threatening to kill or physically injure a *named individual*.*
- Removing minor children from the individual having legal custody of the children, except as otherwise authorized by a custody or visitation order issued by a court of competent jurisdiction.
- Purchasing or possessing a firearm.
- Interfering with petitioner's efforts to remove petitioner's children or personal property from premises that are solely owned or leased by the individual to be restrained or enjoined.
- Interfering with petitioner at petitioner's place of employment or education or engaging in conduct that impairs petitioner's employment or educational relationship or environment.
- Having access to information in records concerning a minor child of both petitioner and respondent that will inform respondent about the address or telephone number of petitioner and petitioner's minor child or about petitioner's employment address.**
- Engaging in conduct that is prohibited under MCL 750.411h and MCL 750.411i (stalking). 7-1-00.
- Any other specific act or conduct that imposes upon or interferes with personal liberty or that causes a reasonable apprehension of violence.
MCL 600.2950(1)(a - j).

* Note that these protections are not limited to "petitioner."

** MCL 380.1137a prohibits a school from releasing information about a minor pupil to the pupil's parent if the parent is prohibited by a PPO from having access to information in records concerning the minor pupil that will inform the parent about the minor's or other parent's address or telephone number, or the other parent's employment address, and if the school has received a copy of the PPO.

2. Non-Domestic Relationship Stalking PPO

a) Petitioners who may obtain a non-domestic relationship stalking PPO

- i) Anyone who does not share a domestic relationship with respondent *and*
- ii) *who is being stalked* by respondent may obtain a non-domestic relationship stalking PPO (e.g. neighbor, co-worker who is being stalked).
MCL 600.2950a(1)

- Exception for prisoners. A court shall not issue a non-domestic relationship stalking PPO under MCL 600.2950a if the petitioner is a prisoner. MCL 600.2950a(28). If a PPO is issued in violation of this prohibition, a court shall rescind the PPO upon notification that petitioner is a prisoner. MCL 600.2950a(28).
"Prisoner" means a person "subject to" the terms and conditions of parole, probation, pretrial release, or a diversionary program, or to incarceration, detention, or admission to a prison, and who is "accused of, convicted of, sentenced for, or adjudicated delinquent for a violation of federal, state, or local law." MCL 600.2950a(29)(c).

b) Behaviors that may be restrained by a non-domestic relationship stalking PPO

- i) Stalking conduct that is prohibited under stalking law. (MCL 750.411h (stalking), 750.411i (aggravated stalking)). Relief shall not be granted unless the petition alleges facts that constitute stalking as defined in MCL 750.411h or MCL 750.411i. MCL 600.2950a(1).
 - 2 or more acts, evidencing continuity of purpose, involving repeated or continuing harassment of another individual (e.g. unconsented contact, following, approaching or confronting, appearing at a workplace or residence, entering onto premises owned, leased, or occupied by the petitioner, telephoning, sending gifts, e-mail, faxes)
 - Acts cause petitioner to feel terrorized, frightened, intimidated, threatened, harassed or molested.
 - Acts would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed or molested.
- ii) Relief may be sought and granted whether or not the respondent has been charged or convicted under the criminal stalking laws, MCL 750.411h or MCL 750.411i. MCL 600.2950a(1).

B. Parent/child; child/parent PPOs prohibited

Neither type of PPO is available for a parent to obtain against his or her unemancipated minor child, or for an unemancipated minor child to obtain against his or her parent.

"A court shall not issue a PPO ...if either of the following applies:

- the unemancipated respondent is the minor child of the petitioner;
- the unemancipated petitioner is the minor child of the respondent."

MCL 600.2950(27); MCL 600.2950a(25).

Note that the juvenile code provides alternative remedies to address circumstances such as delinquency; incorrigibility, abuse and neglect.

C. Minor or legally incapacitated individual as *petitioner: next friend*

1. If *petitioner* is a minor or a legally incapacitated individual, the petitioner shall proceed through a *next friend*. The petitioner shall certify that the next friend is not disqualified by statute and that the next friend is an adult. MCR 3.703(E)(1). 9-1-01
2. Unless the court determines that appointment is necessary, the next friend may act on behalf of the minor or legally incapacitated person without appointment. MCR 3.703(E)(2).
3. However, the court *shall appoint* a next friend if the minor is less than 14 years of age. MCR 3.703(E)(2).
4. The next friend is not responsible for the costs of the action. MCR 3.703(E)(2).

D. Minor respondent

If *respondent* is a *minor*, court and statutory jurisdiction regarding PPOs, and procedures regarding PPO issuance and enforcement differ from adult respondent. See separate outline "Personal Protection Orders, Minor Respondent."

1. Jurisdiction. If *respondent* is a *minor under 18 years*, the *juvenile division of family court* has jurisdiction over issuance and enforcement of PPOs. MCL 712A.2(h). Jurisdiction of that court continues until the PPO expires, but action regarding the PPO after respondent's 18th birthday is not subject to the juvenile code. MCL 712A.2a(3).
2. Issuance. Procedure on issuance, dismissal, modification, or rescission of a minor PPO is pursuant to MCR subchapter 3.700. MCR 5.981; MCR 3.701(A).
3. Enforcement. Proceedings to enforce a minor PPO where the respondent is under 18 are governed by MCR subchapter 5.900. MCR 3.708(A)(2).
4. Dispositions for violation. Respondent *under 17 years* who violates PPO is subject to dispositional alternatives in chapter 18 of juvenile code. MCL 600.2950(23); MCL 600.2950a(20). Respondent *17 years or older* is subject to arrest, incarceration with adult population, and *adult PPO penalties*. MCL 600.2950(23); MCL 600.2950a(20).

E. Circuit court issues all PPOs against adult respondent

Family Court Division of Circuit Court MCL 600.2950(1); MCL 600.2950a(1).

F. Venue

Petitioner may file a PPO action against adult respondent in any county in Michigan, regardless of residency. MCR 3.703(D). (Compare more limited venue options for petitioner seeking to restrain minor respondent: venue is proper in county of residence of either petitioner or minor respondent. If the minor respondent does not live in Michigan, venue for the initial action is proper in petitioner's county of residence. MCL 712A.2(h). MCR 3.703(E)(2)).

G. Forms

1. The state court administrator shall approve forms for use in "personal protection act" proceedings. The forms shall be made available for public distribution by the clerk of the circuit court. MCR 3.701(B).
2. The state court administrative office shall develop and make available forms for use by an individual who wishes to proceed without an attorney. The forms shall include at least a petition for relief, notice of hearing and proof of service for a PPO under MCL 600.2950 or MCL 600.2950a. MCL 600.2950b(1).
3. Forms shall be written in plain English in a simple and easily understood format, and shall be limited, if practicable, to one page in length. MCL 600.2950b(1).
4. Instructions for the forms shall be written in plain English and shall include a simple and easily understood explanation of the proper method of service and filing of the proof of service. MCL 600.2950b(1).
5. The standard PPO form, at a minimum, shall contain all of the information required under MCL 600.2950 or MCL 600.2950a. MCL 600.2950b(2).
6. The state court administrative office shall develop and make available standardized forms for use by individuals restrained or enjoined without notice to move to modify or to rescind a PPO and to request a hearing. MCL 600.2950b(3).
7. The court shall provide a form prepared under MCL 600.2950b without charge. MCL 600.2950b(4).

H. Commencing a PPO Action

1. PPO action is commenced by filing a petition with a court. MCR 3.703(A).
2. "Petition" refers to a pleading for commencing an *independent action* for personal protection. MCR 3.702(2). A PPO action may not be commenced by filing a motion in an existing case or by joining a claim to an action. MCR 3.703(A). 9-1-01 (Court rule abrogates statutory provision permitting petition for PPO to be joined as claim to action or filing motion in pending action. See MCL 600.2950(1); MCL 600.2950(a)(1)).

3. PPO petition is not considered a motion as defined in MCR 2.119. MCR 3.702(2). 9-1-01
4. There are no fees for filing a PPO action. No summons is issued. MCR 3.703. Note that petitioner is responsible for any fees concerning service. If petitioner is indigent, however, petitioner should check with the court about procedures for waiver of service fees for indigent litigants.

I. Case classification codes.

1. **Adult respondent** . Domestic relationship PPOs: [PP]. Non-domestic relationship stalking PPOs: [PH]. MCR 8.117(B)(6)(g) and (h).
2. **Minor respondent**. All PPO filings [issuance *and* enforcement] against minors under MCL 712A.2(h): [PJ]. MCR 8.117(E)(5).

J. Assistance for petitioner

1. No attorney required to obtain PPO. MCL 600.2950(b)(1).
2. Upon request, court may provide assistance, but not legal assistance to individuals in completing forms, and may instruct about proper service requirements. MCL 600.2950(b)(4).
3. The family division of the circuit court may provide a domestic violence advocate to assist victims of domestic violence to obtain a PPO. The court may use the services of a public or private agency that has a record of service to domestic violence victims. MCL 600.2950c(1). The domestic violence advocate may provide, but is not limited to providing, all of the following assistance:
 - inform victim of the availability of, and assist victim with obtaining, serving, modifying, or rescinding a PPO;
 - provide interpreter for a case involving domestic violence, including request for PPO;
 - provide information about shelters, safety plans, counseling, and other social services;
 - provide generic written materials about Michigan law. MCL 600.2950c(1).
4. A domestic violence victim advocate shall not represent or advocate for a domestic violence victim in court. MCL 600.2950c(2).
5. A domestic violence advocate who provides such assistance is not engaging in the unauthorized practice of law. MCL 600.2950c(3).

K. PPO petition requirements

1. Petition must
 - be in writing;
 - state with particularity the facts on which it is based;
 - state the relief sought and the conduct to be restrained;
 - state whether an ex parte order is being sought;
 - *state whether a PPO action involving the same parties has been commenced in another jurisdiction; and*
 - be signed by the party or attorney as provided in MCR 2.114. MCR 3.703(B)
2. *In addition to these requirements, a petition against a minor respondent must list*
 - *the minor's name, address and either age or date of birth; and*
 - *if known or can be easily ascertained, the names and addresses of the minor's parent or parents, guardian, or custodian. MCR 3.703(C).*
3. Petitioner may omit his or her residence address from the documents filed with the court, but must provide the court with a mailing address. MCR 3.703(B)(5). MCL 600.2950(3); MCL 600.2950a(3).
4. If petitioner requests an ex parte order, the petitioner must set forth specific facts showing that immediate and irreparable injury, loss, or damage will result to the petitioner from the delay required to effect notice or from the risk that notice itself will precipitate adverse action before an order can be issued. MCR 3.703(G).
5. The petition must specify whether there are any other pending actions in this or any other court, or orders or judgments already entered by this or any other court affecting the parties, including the name of the court and the case number, if known. MCR 3.703(D).
6. If respondent is
 - a person who is issued a license to carry a concealed weapon AND is required to carry a weapon as a condition of his or her employment;
 - a police officer certified by the Michigan Law Enforcement Officers Training Council Act of 1965 (MCL 28.601 to 28.616);
 - a sheriff;
 - a deputy sheriff; or
 - a member of the Michigan State Police;
 - a local corrections officer;
 - Department of Corrections employee, or;
 - federal law enforcement officer who carries a firearm during the normal course of his or her employment;

the petitioner *shall notify* the court of respondent's occupation *prior to the issuance* of the PPO. This subsection does not apply to a petitioner who does not know respondent's occupation. MCL 600.2950(2); MCL 600.2950a(2).

L. Penalty for false statement to court to obtain PPO

A person who knowingly and intentionally makes a false statement to the court in support of a petition for a PPO is subject to the contempt powers of the court. MCL 600.2950(24); MCL 600.2950a(21).

M. Assignment to judges

If the petition is filed in the same court as a pending action or where an order or judgment already has been entered by that court affecting the parties, it shall be assigned to the same judge. MCR 3.703 (D)(1)(a).

N. Contact with courts concerning other pending actions or existing orders or judgments

1. If there are pending actions in another court or orders or judgments already entered by another court affecting the parties, the court *should contact* the court where the pending actions were filed or orders or judgment were entered, *if practicable, to determine any relevant information.* MCR 3.703 (D)(1)(b).
2. If the prior action resulted in an order providing for *continuing jurisdiction of a minor* (e.g. custody, delinquency, neglect/abuse, other PPO), and the new action requests relief with regard to the minor, *the court* must comply with MCR 3.205. MCR 3.703 (D)(2).
 - a) MCR 3.205 governs prior and subsequent orders and judgments affecting minors.
 - b) MCR 3.205(A) provides if an order or judgment has provided for continuing jurisdiction of a minor and proceedings are commenced in another Michigan court having separate jurisdictional grounds for an action affecting that minor, *a waiver or transfer of jurisdiction is not required for the full and valid exercise of jurisdiction by the subsequent court.*
 - c) MCR 3.205 (B)(2) provides if a minor is known to be subject to the prior continuing jurisdiction of a Michigan court, *the plaintiff or other initiating party** must mail written notice of proceedings in the subsequent court to the attention of
 - the clerk or register of the prior court, AND
 - the "appropriate official" of the prior court. ("Appropriate official" means the friend of the court, juvenile officer, or prosecuting attorney, depending on the nature of the prior or subsequent court action and the court involved. MCR 3.205 (B)(1)).

*Note that MCR 3.703(D)(2) requires that the *court* comply with MCR 3.205. Thus it appears that the court issuing the minor PPO, rather than "the plaintiff or other initiating party," must send notice to the prior court and appropriate official of the prior court.

- d) The notice must be mailed at least 21 days before the date set for hearing. If the fact of continuing jurisdiction is not then known, notice must be given immediately when it becomes known. MCR 3.205(3).
- e) The notice requirement of MCR 3.205(3) is not jurisdictional and does not preclude the subsequent court from entering interim orders before the expiration of the 21 day period, if required by the best interests of the minor. MCR 3.205(B)(4).
- f) Each provision of a prior order remains in effect until the provision is superseded, changed, or terminated by a subsequent order. MCR 3.205(C).
- g) A subsequent court must give due consideration to prior continuing orders of other courts, and may not enter orders contrary to or inconsistent with such orders, *except as provided by law*. MCR 3.205(C). (Note that MCR 3.706(C) specifically provides that a PPO takes precedence over any existing custody or parenting time order until the PPO has expired, or the court having jurisdiction over the custody or parenting time order modifies the custody or parenting time order *to accommodate the conditions of the PPO.*)
- h) **Duties of official of prior court.** Upon receipt of the notice required by MCR 3.205(B), the "appropriate official" (see above, II.N.2.c) : "friend of the court, juvenile officer, or prosecuting attorney, depending on the nature of the prior or subsequent court action and the court involved") of the prior court
 - *must* provide the subsequent court with copies of all relevant orders then in-effect and copies of all relevant records and reports, and
 - *may* appear in person at proceedings in the subsequent court, as the welfare of the minor and interests of justice require. MCR 3.205 (D)(1)(a) and (b).
- i) **Duties of official of subsequent court.** Upon request of the prior court, the "appropriate official" of the subsequent court
 - *must* notify the appropriate official of the prior court of all proceedings in the subsequent court, and
 - *must* send copies of all orders entered in the subsequent court to the attention of the clerk or register *and* the appropriate official of the prior court.MCR 3.205 (D)(2)(a) and (b).
- j) Upon receipt of an order from the subsequent court, the "appropriate official" of the prior court must take steps necessary to implement the order in the prior court. MCR 3.205(D)(4).

O. Existing custody and parenting time orders

1. **Contact with the court having prior jurisdiction.** The court issuing the PPO
 - *must* contact the court having jurisdiction over the parenting time or custody matter as provided in MCR 3.205, (see above, II.N.2.),
 - *and, where practicable, the judge should consult* with that court as contemplated in MCR 3.205(C)(2) regarding the impact upon custody and parenting time rights before issuing the PPO. (see above II. N.2. g).
MCR 3.706(C)(1).
2. **PPO conditions modifying custody and parenting time provisions.** If respondent's custody or parenting time rights will be adversely affected by the PPO, the issuing court shall determine
 - whether conditions should be specified in the PPO which would accommodate respondent's rights,
 - or whether the situation is such that the safety of the petitioner and minor children would be compromised by such conditions. MCR 3.706(C)(2).
3. **Effect of PPO re: exiting custody or parenting time order.** A PPO takes precedence over any existing custody or parenting time order until
 - the PPO has expired, or
 - the court having jurisdiction over the custody or parenting time order modifies the custody or parenting time order *to accommodate the conditions of the PPO*.
MCR 3.307(C)(3).
 - a) If respondent or petitioner wants the existing custody or parenting time order modified, the respondent or petitioner must file a motion with the court having jurisdiction of the custody or parenting time order and request a hearing. The hearing must be held within 21 days after the motion is filed. MCR 3.706(C)(3)(a).
 - b) Proceedings to modify custody and parenting time orders are subject to MCR 3.200, "Domestic Relations Actions." MCR 3.706(C)(3)(b).

P. Mutual PPOs

A PPO shall not be made mutual. Correlative separate PPOs are prohibited unless both parties have properly petitioned the court. MCL 600.2950(8). MCL 600.2950a(5). See also MCR 3.706(B).

Q. Standard for issuance: Domestic Relationship PPO

1. The court *shall issue* a domestic relationship PPO if the court determines that there is *reasonable cause* to believe respondent *may commit* one or more of the acts listed in MCL 600.2950(1), (e.g. assaults, threats, interference with employment or education, conduct interfering with personal liberty, conduct causing reasonable apprehension of violence, stalking.) MCL 600.2950(4).

2. In determining whether *reasonable cause* exists, the court *shall consider* all of the following:
 - a) testimony, documents, other evidence offered in support of request for PPO;
 - b) whether respondent previously has committed or threatened to commit one or more of the acts listed in MCL 600.2950(1). MCL 600.2950(4).
3. "Reasonable cause:" facts and circumstances that would lead a fair-minded person of average intelligence to believe ...
4. The court *shall not refuse* to issue a domestic relationship PPO solely due to the absence of any of the following:
 - a) police report;
 - b) medical report;
 - c) report or finding of administrative agency;
 - d) physical signs of abuse or violence. MCL 600.2950(6).
5. The court shall *not* issue a domestic relationship PPO *prohibiting entry onto premises* if *all* of the following apply:
 - a) respondent is not the spouse of petitioner, and
 - b) respondent or minor respondent's parent, guardian, or custodian has a property interest in the premises, and
 - c) petitioner or minor petitioner's parent, guardian, or custodian has no property interest in the premises. MCL 600.2950(5).
6. **Ex parte domestic relationship PPOs.** An ex parte domestic relationship PPO *shall* be issued and effective without written or oral notice to respondent or respondent's attorney *if* it clearly appears from specific facts shown by verified complaint, written motion, or affidavit
 - that immediate and irreparable injury, loss or damage will result from the delay required to effectuate notice, or
 - that notice itself will precipitate adverse action before a PPO can be issued. MCL 600.2950(12).

R. Standard for issuance: Non-Domestic Relationship Stalking PPO

1. MCL 600.2950a does not specify a standard of proof. Standard of proof in civil cases, unless otherwise specified in statute, is *preponderance of evidence*.
2. **Ex parte non-domestic relationship PPOs.** An ex parte non-domestic relationship PPO shall *not* be issued and effective without written or oral notice to respondent or respondent's attorney *unless* it clearly appears from specific facts shown by verified complaint, written motion, or affidavit
 - a) that immediate and irreparable injury, loss or damage will result from the delay required to effectuate notice or
 - b) that notice itself will precipitate adverse action before a PPO can be issued. MCL 600.2950a(9).

S. Procedure for issuance: all ex parte PPOs

1. The court must rule on a request for an ex parte PPO within 24 hours of the filing of the petition. MCR 3.705(A)(1).
2. If it clearly appears from specific facts shown by verified complaint, written petition, or affidavit that the petitioner is entitled to the relief sought, an ex parte order *shall be granted if* immediate and irreparable injury, loss, or damage will result from the delay required to effectuate notice or that notice itself will precipitate adverse action before a PPO can be issued. MCR 3.705(A)(2). (Note court rule language differs from language in non-domestic stalking PPO statute, MCL 600.2950a(9), re: standard for issuance for ex parte non-domestic stalking PPO.)
3. A permanent record or memorandum must be made of any non-written evidence, argument, or other representations made in support of issuance of an ex parte PPO. MCR 3.705(A)(2).
4. An ex parte PPO is valid for not less than 182 days. MCL 600.2950(13). MCL 600.2950a(10). MCR 3.705(A)(3).
5. An ex parte PPO must state its expiration date. MCR 3.705(A)(3).
6. If the court refuses to grant an ex parte PPO it shall
 - state the reasons *in writing* AND
 - advise the petitioner of the right to request a hearing as provided in MCR 3.705(B). MCR 3.705(A)(5).

(See also MCL 600.2950 (7), MCL 600.2950a(4): If the court refuses to grant a PPO, the court shall state "immediately" in writing the "specific" reasons it refuses to issue the PPO.)

 - a) If petitioner does not request a hearing within 21 days of the entry of the order, the order denying the PPO is final. MCR 3.705(A)(5).
 - b) The court is not required to advise petitioner of the right to a hearing if the *court* determines, *after interviewing the petitioner*, that the petitioner's claims are sufficiently without merit that the action should be dismissed without a hearing. MCR 3.705(A)(5).
7. If an ex parte PPO is entered, petitioner must serve the *petition and PPO* as provided in MCR 3.706(D). However, failure to make service does not affect the PPO's validity or effectiveness. MCR 3.705(A)(4). (See service requirements, below, "Service of PPO," II.Y.)

8. Respondent has opportunity to challenge and attempt to modify or rescind ex parte PPO. See II.AA., *Modification or Termination of PPO*.
 - a) The State Court Administrative Office shall develop and make available forms for use by respondent restrained or enjoined without notice to move to modify or terminate a PPO and request a hearing. MCL 600.2950b(3).
 - b) Motion fees. As of 7-1-00, in conjunction with an action brought under MCL 600.2950 or MCL 600.2950a, a motion fee shall not be collected for a motion to dismiss a petition, a motion to modify, or terminate a PPO, or a motion to show cause for a violation of a PPO. MCL 600.2529(1)(e).

T. All PPOs: issuance hearing procedures

1. The court shall schedule a hearing on the petition as soon as possible in the following instances, unless it determines, after interviewing the petitioner, that the claims are sufficiently without merit that the action should be dismissed without a hearing:
 - a) petitioner does not request an ex parte PPO; or
 - b) the court refuses to issue an ex parte PPO and petitioner subsequently requests a hearing. MCR 3.705(B)(1).
2. Notice. Petitioner shall serve notice of the hearing, *along with the petition*, on respondent as provided in MCR 2.105(A). (Note: If respondent is a minor, and the whereabouts of respondent's parent or parents, guardian, or custodian are known, petitioner shall *also serve* in the same manner notice of the hearing and the petition on respondent's *parent or parents, guardian, or custodian*. MCR 3.705(B)(2)).
 - a) *One day* before the hearing is deemed sufficient notice. MCR 3.705(B)(2).
 - b) MCR 2.105(A) provides that process may be served on a resident or nonresident individual by
 - delivering a summons and a copy of the complaint to the respondent personally; MCR 2.105(A)(1); or
 - sending a summons and a copy of the complaint by registered or certified mail, return receipt requested, and delivery restricted to the addressee. Service is made when the respondent acknowledges receipt of the mail. A copy of the return receipt signed by the respondent must be attached to proof showing service under MCR 2.105(A)(2). MCR 2.105(A)(2).
 - c) MCR 2.103(A) provides that process in civil actions may be served by any legally competent adult who is *not a party* or an officer of a corporate party.
3. The hearing shall be held on the record. MCR 3.705(B)(3).

4. Petitioner must attend the hearing. If petitioner fails to attend the hearing, the court may
 - adjourn and reschedule the hearing; or
 - dismiss the petition. MCR 3.705(B)(4),

(Note: Before dismissal for failure of petitioner to attend hearing, court should consider likelihood of intimidation, interference by respondent.)

5. If respondent fails to appear at a hearing on the petition, *and* the court determines that petitioner made diligent attempts to serve respondent, whether respondent was served or not, the PPO may be entered without further notice to respondent if the court determines that petitioner is entitled to relief. MCR 3.705(B)(5).
6. At the conclusion of the hearing, the court shall:
 - state *on the record* the reasons for granting or denying a PPO; and
 - enter an appropriate order; and
 - state *in writing* the reasons for *denying* a PPO. MCR 3.75(B)(6).

(See also MCL 600.2050(7), MCL 600.2950a(4): If the court refuses to grant a PPO, the court shall state "*immediately*" in writing the "*specific*" reasons it refuses to issue the PPO. If a hearing is held, the court also "*immediately*" shall state on the record the "*specific*" reasons it refuses to issue the PPO.)

U. Dismissal of PPO prior to issuance

Except as specified in MCR 3.705(A) (ex parte PPO issuance procedures) and MCR 3.705(B) (PPO hearing procedures), an action for a PPO may be dismissed *only upon motion by the petitioner* prior to issuance of the PPO. There is no fee for such a motion. MCR 3.704. 9-1-01

1. MCR 3.705(A)(5) provides for dismissal of ex parte PPO action by the court if the court determines, after interviewing petitioner, that petitioner's claims are sufficiently without merit that the action should be dismissed without a hearing.
2. MCR 3.705(B)(1) provides for dismissal of PPO action by court if, after petitioner's request for hearing, the court determines, after interviewing the petitioner, that petitioner's claims are sufficiently without merit that the action should be dismissed without a hearing.
3. MCR 3.705(B)(4) provides for dismissal of PPO petition (or hearing adjournment and rescheduling) by court if, after petitioner's request for hearing, petitioner fails to attend hearing.
4. i.e. Court clerks should not process PPO action dismissals, prior to issuance of PPO, without explicit court direction on particular PPO petition pursuant to MCR 3.704.

V. Contents of PPO

MCR 3.706(A)(1-7) provides that an order granting a PPO must include the following:

1. A statement that the PPO has been entered, listing the type or types of conduct enjoined.
2. A statement that the PPO is effective when signed by the judge and is immediately enforceable.
3. A statement that violation of the PPO will subject respondent to either of the following:
 - a) If respondent is 17 years of age or more, immediate arrest and, if respondent is found guilty of criminal contempt, imprisonment for not more than 93 days and may be fined not more than \$500; or
 - b) *If respondent is less than 17 years of age, immediate apprehension and, if respondent is found in contempt, the dispositional alternatives listed in MCL 712A.18.*

(Note statutory language differs from court rule:

"A PPO shall include all of the following and to the extent practicable the following shall be contained in a single form:"

- a) *If respondent is 17 years of age or more, immediate arrest and "civil and criminal contempt powers of the court" and if respondent is found guilty of criminal contempt, respondent "shall be imprisoned" for not more than 93 days and "may be fined" not more than \$500.*
- b) *If respondent is less than 17 years of age, immediate apprehension "or being taken into custody," and subject to the dispositional alternatives listed in MCL 712A.18...(MCL 600.2950(11)(a); MCL 600.2950a(8)(a)).*

4. An expiration date clearly stated on the face of the PPO.
5. A statement that the PPO is enforceable anywhere in Michigan by any law enforcement agency.
6. Identification of the law enforcement agency designated by the court to enter the PPO into LEIN.
7. For ex parte PPOs, a statement that, within 14 days after being served with or receiving actual notice of the order, respondent may file a motion to modify or terminate the PPO and a request for a hearing, and that motion forms and filing instructions are available from the clerk of the court. MCR 3.706(A)(1-7). See also MCL 600.2950(11)(g), MCL 600.2950a(8)(g). 9-1-01

W. Effectiveness of PPO

A PPO is effective and immediately enforceable when signed by a judge. MCL 600.2950(9); MCL 600.2950a(6).

- Service requirements do not prohibit immediate effectiveness of PPO or immediate enforcement under MCL 600.2950(21) and (22) or MCL 600.2950a(18) and (19). MCL 600.2950(18); MCL 600.2950a(15).

X. Responsibilities of court clerk and designated law enforcement agency upon issuance of PPO

1. **Court clerk** immediately upon issuance of PPO, and without requiring proof of service, shall:
 - a) File a true copy of the PPO with the law enforcement agency designated by the court in the PPO.
 - b) Provide petitioner with not less than 2 true copies of the PPO. MCL 600.2950(15); MCL 600.2950a(12).
 - c) Inform petitioner that petitioner may take a true copy of the PPO to the law enforcement agency designated by the court in the PPO to be entered into LEIN immediately. MCL 600.2950(16); MCL 600.2950a(13).
 - d) If respondent is identified in the pleadings as a law enforcement officer, notify the officer's employing law enforcement agency, if known, about the existence of the PPO. MCL 600.2950(15)(c); MCL 600.2950a(12)(c).
 - e) If the PPO prohibits respondent from purchasing or possessing a firearm, notify the concealed weapon licensing board respondent's county of residence about the existence and contents of the PPO. MCL 600.2950(15)(d); MCL 600.2950a(12)(d).
 - f) If respondent is identified in the pleadings as a Department of Corrections employee, notify the state Department of Corrections about the existence of the PPO. MCL 600.2950(15)(e); MCL 600.2950a(12)(e).
 - g) If respondent is identified in the pleadings as a person who may have access to information concerning petitioner or a child of petitioner or respondent, and that information is contained in friend of the court records, notify the friend of the court for the county in which the information is located about the existence of the PPO. MCL 600.2950(15)(f); MCL 600.2950a(12)(f).

*Note: Upon entry of each PPO into LEIN, Michigan State Police sends to each respondent a letter notifying respondent that while the PPO is in effect respondent may not purchase a handgun or obtain a concealed weapons permit. This letter may be sent to respondent before respondent is served with the PPO. Best practice recommendation: Court clerks advise petitioner about this letter so that petitioner can take appropriate safety precautions in light of the fact that, due to the MSP letter, respondent may learn about the PPO prior to being served with the PPO.

2. Law enforcement agency designated in PPO as responsible for LEIN entry that receives a true copy of the PPO from the court clerk or from petitioner immediately and without requiring proof of service shall enter the PPO into LEIN as provided by the LEIN Policy Council Act of 1974, MCL 28.211 to 28.216. MCL 600.2950(17); MCL 600.2950a(14).

Y. Service of PPO

1. Statutory provisions regarding PPO service provide for *PPO service or oral notification by law enforcement officer or clerk of court*.
 - a) A PPO shall be served personally or by registered or certified mail, return receipt requested, delivery restricted to addressee at respondent's last known address or addresses, or by any other manner provided in the Michigan court rules. MCL 600.2950(18); MCL 600.2950a(15).
 - b) If respondent has not been served, a law enforcement officer or clerk of the court who knows that a PPO exists *may*, at any time,
 - i) serve respondent with a *true copy* of the PPO or
 - ii) advise respondent about
 - the existence of the PPO,
 - the specific conduct enjoined,
 - the penalties for violating the PPO, and
 - where respondent may obtain a copy of the PPO.MCL 600.2950(18); MCL 600.2950a(15).
 - c) If respondent is less than 18 years of age, respondent's parent, guardian, or custodian also shall be served personally or by registered or certified mail, return receipt requested, delivery restricted to last known address or addresses of respondent's parent, guardian, or custodian. MCL 600.2950(18); MCL 600.2950a(15).
 - d) A proof of service or proof of oral notice shall be filed with the clerk of the court issuing the PPO. MCL 600.2950(18); MCL 600.2950a(15).
 - e) Service requirements do not prohibit immediate effectiveness of PPO or its immediate enforcement under MCL 600.2950(21) and (22) or MCL 600.2950a(18) and (19). MCL 600.2950(18); MCL 600.2950a(15).
2. MCR 3.706 governs service of PPOs.
 - a) Petitioner shall serve the PPO on respondent as provided in MCR 2.105(A). If respondent is a minor, and the whereabouts of respondent's parent or parents, guardian, or custodian are known, the petitioner also in the same manner shall serve the PPO on respondent's parent or parents, guardian, or custodian. MCR 3.706 (D).
 - i) MCR 2.105(A) provides that process may be served on a resident or nonresident individual by
 - delivering a summons and a copy of the complaint to the respondent personally; MCR 2.105(A)(1); or
 - sending a summons and a copy of the complaint by registered or certified mail, return receipt requested, and delivery restricted to

the addressee. Service is made when the respondent acknowledges receipt of the mail. A copy of the return receipt signed by the respondent must be attached to proof showing service under MCR 2.105(A)(2). MCR 2.105(A)(2).

b) On an appropriate showing, the court may allow service in another manner as provided in MCR 2.105(I). MCR 3.706(D).

i) MCR 2.105(I) provides that on a showing that service of process cannot reasonably be made as provided by this rule, the court may by order permit service of process to be made in any other manner reasonably calculated to give respondent actual notice of the proceedings and an opportunity to be heard.

ii) A request for an order under MCR 2.105(I) must be made in a verified motion dated not more than 14 days before it is filed. The motion must set forth sufficient facts to show that process cannot be served under this rule and must state respondent's address or last known address, or that no address of respondent is known. If the name or present address of respondent is unknown, the moving party must set forth facts showing diligent inquiry to ascertain it. A hearing on the motion is not required unless the court so directs. MCR 2.105(I)(2).

iii) Service of process may not be made under MCR 2.105(I) before entry of the court's order permitting it. MCR 2.105(I)(3).

c) Failure to serve the PPO does not affect its validity or effectiveness
MCR 3.706(D)

3. MCR 2.103(A) provides that process in civil actions may be served by any legally competent adult who is *not a party* or an officer of a corporate party.

4. MCR 2.104 governs proof of service.

a) Proof of service may be made by:

i) written *acknowledgment of the receipt* of a summons and a copy of the complaint, dated and signed *by the person to whom service is directed* or by a person authorized under these rules to receive the service of process;

ii) a *certificate* stating the facts of service, including the manner, time, date, and place of service, *if service is made* within the State of Michigan by

- a sheriff,
- a deputy sheriff or bailiff, if that officer holds office in the county in which the court issuing process is held,
- an appointed court officer,
- an attorney for a party; or

iii) an *affidavit* stating the facts of service, including the manner, time, date, and place of service, and indicating the process server's official capacity, if any. MCR 2.104(A)(1-3).

- b) The place of service must be described by giving the address where the service was made or, if the service was not made at a particular address, by another description of the location. MCR 2.104(A)
- c) If the manner of service used requires sending a copy of the summons and complaint by mail, the party requesting issuance of the summons is responsible for arranging the mailing and filing the proof of service. MCR 2.104(C).
- d) Failure to file the proof of service does not effect the validity of the service MCR 2.104(B).

Z. Responsibilities of court clerk and designated law enforcement agency upon service, termination, modification or extension of PPO

- 1. **Court clerk** immediately shall notify law enforcement agency responsible for LEIN entry when
 - a) court clerk receives proof that respondent has been served, or
 - b) PPO is terminated, modified, or extended by court order. MCL 600.2950(19); MCL 600.2950a(16). See also MCR 3.707(A)(3), MCR 3.707(B)(2). 9-1-01
- 2. **Law enforcement agency** designated in PPO as responsible for LEIN entry immediately shall enter or cause to be entered into LEIN, as provided by the LEIN Policy Council Act of 1974, MCL 28.211 to 28.216, information received from court clerk re:
 - a) court clerk has received proof that respondent has been served, or
 - b) PPO is terminated, modified or extended by court order. MCL 600.2950(20); MCL 600.2950a(17).

AA. Modification or termination of PPO

1. Motion filing

- a) Petitioner may file a *motion* to modify or terminate the PPO and *request a hearing at any time* after the PPO is issued. MCR 3.707(A)(1)(a). 9-1-01
- b) Respondent may file a *motion* to modify or terminate the PPO *and request a hearing within 14 days after being served with, or receiving actual notice of, the PPO unless good cause is shown for filing the motion after 14 days have elapsed.* MCR 3.707(A)(1)(b). 9-1-01
- c) Note that court rule contemplates *motion and hearing*, rather than stipulation, to modify or terminate PPO.

2. Notice and service of motion

The moving party shall serve the motion to modify or terminate the PPO and the notice of hearing *at least 7 days* before the hearing date as provided in MCR 2.105(A)(2) at the mailing address or addresses provided to the court. On appropriate showing, the court may allow service in another manner as provided in MCR 2.105(I). MCR 3.707(A)(1)(c). 9-1-01

- a) MCR 2.105(A)(2) provides that process may be served on a resident or non-resident individual by sending a summons and a copy of the complaint by registered or certified mail, return receipt requested, and delivery restricted to the addressee. Service is made when the [addressee] acknowledges receipt of the mail. A copy of the return receipt signed by the [addressee] must be attached to proof showing service. MCR 2.103(A) provides that process in civil actions may be served by any legally competent adult who is *not* a party or an officer of a corporate party.
- b) Note that MCR 3.707(A)(1)(c) does not provide for *personal service* (MCR 2.105(A)(1)) of motion to modify or terminate PPO, limiting service to mail under MCR 2.105(A)(2).
- c) See II.Y.2 b., above, re: alternative service by court order under MCR 2.105(I).
- d) MCR 3.707(A)(1)(c) does not set forth requirement regarding service of the motion to modify or terminate a PPO and notice of hearing where respondent is a minor. However, MCR 2.105(B)(2) provides that service of process may be made on a minor by serving a summons and a copy of the complaint on a person having care and control of the minor and with whom the minor resides.
- e) If the moving party is a respondent who is
 - issued a license to carry a weapon as a condition of employment,
 - a police officer certified by the MLEOTC Act of 1965, MCL 28.601 to 28.616,
 - a sheriff,
 - a deputy sheriff,
 - a member of the Michigan State Police,
 - a local corrections officer,
 - a Department of Corrections employee, or
 - a federal law enforcement officer who carries a firearm during the normal course of employment,

providing notice *one day* before the hearing is deemed sufficient notice to petitioner.
MCR 3.707(A)(1)(c).

3. **Hearing on motion to modify or terminate**

- a) The court must schedule and hold a hearing on a motion to modify or terminate a PPO within 14 days of the filing of the motion. MCR 3.707(A)(2).
- b) If the respondent is a person described in MCL 600.2950(2) or MCL 600.2950a(2), (i.e. a designated individual requiring weapon for employment, II.AA.2.3, above), the court shall schedule the hearing on the motion within 5 days after the filing of the motion. MCR 3.707(A)(2). 9-1-01.

c) Compare statutory provisions. If respondent is a person described in MCL 600.2950(2) or MCL 600.2950a(2), (i.e. a designated individual requiring weapon for employment, II.AA.2.3, above), *and the PPO prohibits respondent from purchasing or possessing a firearm*, the court shall schedule the hearing on the motion to modify or rescind an ex parte PPO within 5 days after the filing of the motion to modify or rescind. MCL 600.2950(14); MCL 600.2950a(11).

4. Notice of modification or termination

If a PPO is modified or terminated, the clerk immediately must notify the law enforcement agency specified in the PPO of the change. MCR 3.707(A)(3).

5. Service of modified or terminated order

A modified or terminated order must be served as provided in MCR 2.107. MCR 3.707(A)(3).*

- a) MCR 2.107 provides that service on a party must be made by delivery or by mailing to the party at the address stated in the party's pleadings. MCR 2.107(C).
- b) Delivery to a party within MCR 2.107 means handing it to the party personally; or leaving it at the party's usual residence with some person of suitable age and discretion residing there. MCR 2.107(C)(2).
- c) Mailing under MCR 2.107 means enclosing it in a sealed envelope with first class postage fully prepaid, addressed to the person to be served, and depositing the envelope and its contents in the U.S. mail. Service by mail is complete at the time of mailing.
- d) MCR 2.103(A) provides that process in civil actions may be served by any legally competent adult who is not a party, or an officer of a corporate party.
- e) Neither MCR 3.707(A)(3) nor MCR 2.107 addresses service upon a minor.
- f) MCR 2.107(B) governs service upon a party for whom an attorney has appeared in the action and provides that service must be made on the attorney except in particular circumstances. See MCR 2.107(B).

*Note: Best practice recommendation for service of modified or terminated PPO is to follow *MCR 3.706(D)* (court rule regarding service of PPO), rather than MCR 3.707(A)(3) (court rule regarding service of modified or terminated order), as compliance with MCR 3.706(D) will better ensure appropriate notice of modified or terminated PPO to respondent and to petitioner.

6. Minors and legally incapacitated individuals

Petitioners or respondents who are minors or legally incapacitated individuals must proceed through a next friend, as provided in MCR 3.703(F). MCR 3.707(C). 9-1-01

7. Fees

There are no motion fees for modifying or terminating a PPO. MCR 3.707(C). 9-1-01

BB. Extension of PPO

1. Motion filing

- a) Petitioner may file an *ex parte* motion to extend the effectiveness of the PPO, *without hearing*, by requesting a new expiration date.
- b) The motion must be filed with the court that issued the PPO no later than 3 days before the PPO is to expire.
- c) The court *must act on the motion within 3 days* after it is filed.
- d) Failure to timely file a motion to extend the effectiveness of the PPO does not preclude petitioner from filing a new PPO action regarding the same respondent, as provided in MCR 3.703. MCR 3.707(B)(1). 9-1-01

2. Notice of extension

- a) If the expiration date on a PPO is extended, an amended PPO must be entered.
- b) The clerk must immediately notify the law enforcement agency specified in the PPO of the change. MCR 3.707(B)(2). 9-1-01

3. Service of extended PPO

The amended/extended PPO must be served on respondent as provided in MCR 2.107. (See comments above, II. AA.5., re: MCR 2.107.) MCR 3.707(B)(2). 9-1-01

4. Minors and legally incapacitated individuals

Petitioners or respondents who are minors or legally incapacitated individuals *must proceed* through a next friend, as provided in MCR 3.703(F). MCR 3.707(C). 9-1-01

5. Fees

There are no motion fees for extending a PPO. MCR 3.707(C). 9-1-01

CC. Appeals from entry of PPO

- 1. Except as provided by MCR 3.709, appeals concerning adult respondent must comply with MCR 7.200.
 - a) MCR 3.709 provides that either party has an *appeal of right* from
 - an order granting or denying a PPO after a hearing under MCR 3.705(B)(6), or
 - the ruling on respondent's first motion to rescind or modify the order if an *ex parte* order was entered. MCR 3.709(B)(1).
 - b) MCR 3.709 further provides that appeals of all other orders are by *leave* to appeal.

III. ENFORCEMENT OF PPO AGAINST ADULT RESPONDENT

A. Applicable Court Rules

Proceedings to enforce a PPO issued against an adult, or to enforce a minor PPO still in effect when the respondent is 18 years or older, are governed by MCR 3.708.

MCR 3.708(A)(2).

(Proceedings to enforce a minor PPO where respondent is under 18 are governed by MCR subchapter 5.900. MCR 3.708(A)(2)).

B. Statutory enforcement authority

A PPO is enforceable under MCL 600.2950(23), (25); MCL 600.2950a(20), (22); MCLA 764.15b; and MCLA 600.1701, et seq. MCR 3.708(A)(1). 9-1-01

1. MCL 600.2950(23) and MCL 600.2950a(20) provide that a respondent 17 years of age or more who refuses or fails to comply with a PPO is subject to criminal contempt powers of court, and if found guilty, *shall* be imprisoned for not more than 93 days and *may* be fined not more than \$500. An individual who is less than 17 years of age and who refuses or fails to comply with a PPO is subject to the dispositional alternatives listed in Section 18 of the juvenile code, MCL 712A.18. The criminal penalty provided for in these sections may be imposed in addition to any penalty that may be imposed for another criminal offense arising from the same conduct.
2. MCL 600.2950(25) and MCL 600.2950a(22) provide that a domestic relationship PPO and a non-domestic relationship stalking PPO also are enforceable under
 - MCL 712A.1 to 712A.31(juvenile code), and
 - MCL 764.15b (warrantless arrest authority for law enforcement officer who has or receives positive information that another officer has reasonable cause to believe respondent is violating or has violated a PPO; enforcement procedures following arrest; enforcement procedures following show cause).
3. MCL 600.1701 et seq provides for civil contempt proceedings and sanctions.

C. Mechanisms to initiate enforcement proceedings for PPO violation

1. Two mechanisms to initiate contempt proceedings for PPO violations by adult respondent
 - Warrantless arrest, or
 - Petitioner's motion to show cause (and bench warrant or order to appear)
2. Compare minor respondent
 - apprehension without court order, or
 - supplemental petition (and order to apprehend or summons to appear)

D. Law enforcement authority

A PPO is immediately enforceable anywhere in Michigan by *any* law enforcement agency that has:

- received a *true copy* of the PPO or
- is shown a *copy* of the PPO or
- has verified the existence of the PPO on LEIN.

MCL 600.2950(21); MCL 600.2950a(18).

E. Enforcement of PPO when respondent has not been served

If the person restrained has not been served when a law enforcement officer *responds to a call alleging violation* of a PPO, the officer *shall do all of the following*:

1. Serve the person restrained with a *true copy* of the PPO or *advise* the person restrained of:
 - a) the existence of the PPO
 - b) the specific conduct enjoined
 - c) the penalties for violating the PPO and
 - d) where the person restrained can get a copy of the PPO.
2. *Enforce* the PPO. If the person restrained has not received notice of the PPO, the person shall be given an opportunity to comply with the PPO before the law enforcement officer makes a custodial arrest for violation of the PPO. The failure to comply shall be grounds for an immediate custodial arrest. (**Arrest for the PPO violation does not preclude arrest for violation of criminal law. PPO violator can be arrested and prosecuted for PPO violation and crime.) MCL 600.2950(22); MCL 600.2950a(19).
3. *Immediately enter into LEIN* or cause to be entered into LEIN that the person restrained has *actual notice* of the PPO. MCL 600.2950(22); MCL 600.2950a(19).
4. If oral notice of the order is made by a law enforcement officer as described in MCLA 600.2950(22) or MCLA 600.2950a(19), *proof of the notification must be filed* with the court by the law enforcement officer. MCR 3.706(E).

F. Warrantless arrest authority for PPO violation

A police officer, without a warrant, may arrest and take a person into custody when the officer has or receives positive information that another law enforcement officer has reasonable cause to believe all of the following apply:

1. A PPO has been issued under MCL 600.2950 (domestic relationship PPO) or MCL 600.2950a (non-domestic relationship stalking PPO).
2. The PPO states on its face that violation subjects respondent to immediate arrest and either of the following:

- a) if respondent is 17 years of age or older, to criminal contempt of court and, if found guilty of criminal contempt, to imprisonment for not more than 93 days and to a fine of not more than \$500;
 - b) if respondent is less than 17 years of age, to the dispositional alternatives listed in MCL 712A.18.
3. The person named in the PPO is violating or has violated the PPO. A person is violating or has violated a PPO if the person commits one or more of the acts that the PPO specifically restrains the person from committing (e.g., assaulting; removing children from person with legal custody except as authorized by court order; entering onto premises; stalking; threatening to kill or injure; purchasing or possessing a firearm; interfering with petitioner at petitioner's place of employment or education; any other conduct specified in the PPO). MCL 764.15(b)(1).

G. Common questions concerning warrantless arrest authority for PPO violation

- 1. Does the PPO violation have to occur in the presence of the law enforcement officer? NO.
 - a) "...*reasonable cause* to believe..." MCL 764.15b(1)(a).
 - b) "...*is violating or has violated*. . .PPO". MCL 764.15b(1)(b).
 - Statutory language now parallels MCL 764.15a: warrantless arrest authority for domestic relationship assault/assault and battery and domestic relationship aggravated assault: "...*reasonable cause to believe...violation occurred or is occurring*."
- 2. What if violator has left scene?
 - a) Warrantless arrest authority does not "expire" under MCL 764.15b.
 - b) "Comfort level" of officers re: warrantless arrest with passage of time.
 - Note re: violator's travel outside officer's jurisdiction. Officer may arrest if officer has *or receives positive information that another peace officer has reasonable cause to believe...*" MCL 764.15b(1).
 - c) Suggestions for law enforcement officers:
 - i) "Reasonableness": time, danger (lethality assessment).
 - ii) Look for PPO violator and arrest.
 - iii) Consider crime for which criminal warrant can be obtained (Note: Cannot obtain criminal warrant for PPO violation itself).

*Always consider warrant for stalking. Repeated violations of PPO most likely will constitute the crime of stalking. Existence of PPO enhances stalking to felony.

iv) Last resort: If no crime has been committed along with PPO violation, petitioner can be advised to file "motion to show cause" and ask court to issue "order to show cause" or "bench warrant" for violator. Petitioners use own attorney (or agency such as Women's Survival Center in Oakland County.) See MCR 3.708(B). See III.J., this outline.

** Problems:

- Confusion for petitioner
- Cost for petitioner
- Delay/danger for petitioner

3. What happens if "A" obtains PPO restraining "B" from entering onto premises occupied by "A" and then "A" invites or allows "B" onto those premises? Is there a PPO violation? By whom?
 - a) PPO is court order. Only court can change its order.
 - b) "A" cannot change the court's order.
 - c) "B" has violated court's order.
 - d) Consider liability if fail to arrest "B" for clear violation of PPO.
 - e) Consider complexity of domestic violence / possibility of pressure upon petitioner by respondent.
 - f) Arrest allows court to address circumstances of violation and need for continuation of PPO. *If petitioner knowingly and intentionally made false statement in support of petition for PPO, petitioner subject to contempt powers of court. MCL 600.2950(24), MCL 600.2950a(21).*
4. If police officer, in routine traffic stop, determines by LEIN that person stopped has PPO issued against him or her, but respondent has not been served or notified re: PPO, is police officer's oral notice of PPO sufficient to change LEIN entry to "served" or "actual notice given," allowing warrantless arrest of violator without further notice/service? As of 7-1-00: YES.
 - Prior to 7-1-00, oral notice provisions limited by statute to officer "responding to a domestic violence call alleging violation of a PPO." MCL 600.2950(21); MCL 600.2950a(18).

- As of 7-1-00, if respondent has not been served, a law enforcement officer or clerk of the court who knows that a PPO exists may, at any time,
 - i) serve respondent with a true copy of the PPO or
 - ii) advise respondent about
 - the existence of the PPO,
 - the specific conduct enjoined,
 - the penalties for violating the PPO, and
 - where respondent may obtain a copy of the PPO.
- MCL 600.2950(18); MCL 600.2950a(15).

A proof of service or proof of oral notice shall be filed with the clerk of the court issuing the PPO. MCL 600.2950(18); MCL 600.2950a(15).

H. Domestic violence incidents: additional law enforcement responsibilities

1. Report writing

MCL 764.15c(2) provides that a law enforcement officer must prepare a domestic violence report after investigating or intervening in a domestic violence incident. "Domestic violence incident" is defined as an incident reported to a law enforcement agency involving allegations of one or both of the following:

- a violation of a PPO issued under MCL 600.2950;
- a crime committed by an individual against his or her spouse or former spouse, an individual with whom he or she has a child in common, or an individual who resides or has resided in the same household. MCL 764.15c(4)

- a) The report must contain specific information set forth in MCL 764.15c(2), including all of the following:
 - i) address, date, and time of incident being investigated;
 - ii) victim's name, address, home and work telephone numbers, race, sex, and date of birth;
 - iii) suspect's name, address, home and work telephone numbers, race, sex, date of birth, and information describing the suspect and whether an injunction or restraining order covering the suspect exists;
 - iv) name, address, home and work telephone numbers, race, sex, and date of birth of any witness, including a child of the victim or suspect, and the relationship of the witness to the victim or suspect;
 - v) name of the person who called the law enforcement agency;
 - vi) relationship of victim and suspect;
 - vii) whether alcohol or controlled substance use was involved in the incident, and by who it was used;
 - viii) brief narrative describing the incident and the circumstances that led to it;
 - ix) whether and how many times the suspect physically assaulted the victim and a description of any weapon or object used;
 - x) a description of all injuries sustained by the victim and an explanation of how the injuries were sustained;
 - xi) if the victim sought medical attention, information concerning where and how the victim was transported, whether the victim was admitted to a hospital or clinic for treatment, and the name and telephone number of the attending physician;

- xii) a description of any property damage reported by the victim or evident at the scene;
 - xiii) a description of any previous domestic violence incidents between the victim and the suspect;
 - xiv) date and time of the report and the name, badge number, and signature of the law enforcement officer completing the report.
- b) The law enforcement agency must retain the completed domestic violence report in its files.
- c) The law enforcement agency also must file a copy of the completed domestic violence report with the prosecuting attorney within 48 hours after the domestic violence incident is reported to the law enforcement agency. MCL 764.15c(3).

2. Notice of victim rights

MCL 764.15c(1) provides that after investigating or intervening in a domestic violence incident (as defined above, III. H.1,) a law enforcement officer must provide the victim with a copy of a written notice of victim rights that includes all of the following:

- the name and phone number of the responding police agency;
- the name and badge number of the responding officer;
- a statement informing the victim how to obtain a copy of the police report;
- a list of local domestic violence and other resources
- a statement that information about emergency shelter, counseling services, and the legal rights of domestic violence victims is available from the resources;
- information about obtaining a PPO;
- a statement that the victim's legal rights include the right to go to court and file a motion for an order to show cause and a hearing if the abuser is violating or has violated the PPO and has not been arrested.

I. Procedure after arrest for PPO violation

1. No bond until court reviews case and sets bond.
2. A person arrested for a PPO violation shall be brought before the circuit court in the county of the violation within 24 hours after arrest to answer to a charge of contempt for the PPO violation. MCL 764.15b(2).
3. In circuits where the circuit court judge may not be present or available within 24 hours after arrest, a person arrested for a PPO violation shall be taken before the district court within 24 hours after arrest, at which time the district court shall:
 - a) Order the defendant to appear before the circuit court of the county of the violation for a hearing on the charge and
 - b) Set bond. MCL 764.15b(3). MCR 3.708(C)(3). 9-1-01. See bond requirements, below, III.L.

- c) If the district court will not be open within 24 hours after arrest, a judge or district court magistrate shall set bond and order the defendant to appear before the circuit court in the county for a hearing on the charge. MCL 764.15b(3).
- 4. The circuit court for each county of the state has jurisdiction to conduct contempt proceedings based upon a violation of a PPO issued by the circuit court in any county of the state. MCL 764.15b(4). See also, MCR 3.708(C).
 - a) The court of arraignment shall notify the circuit court that issued the PPO of the defendant's arrest for the PPO violation.
 - b) The issuing court may request that the defendant be returned to that county for hearing on the PPO violation.
 - c) If the circuit that issued the PPO requests that the defendant be returned to that county for hearing on the PPO violation, the requesting county shall bear the cost of transporting the defendant to that county. MCL 764.15b(4).
 - d) A contempt proceeding brought in a court other than the issuing court shall be entitled "In the Matter of Contempt of [Respondent]".
 - The clerk shall provide a copy of any documents pertaining to the contempt proceedings to the issuing court. MCR 3.708(C)(2). 9-1-01

J. PPO contempt proceedings initiated by motion to show cause

1. Filing

- a) If respondent violates the PPO, the petitioner may file a motion supported by appropriate affidavit, to have the respondent found in contempt.
- b) There is no fee for such a motion.
- c) If petitioner's motion and affidavit establish a basis for a finding of contempt, the court shall either:
 - i) Order the respondent to appear at a specified time to answer the contempt charge; or
 - ii) Issue a bench warrant for the arrest of respondent.

MCR 3.708(B)(1). 9-1-01

2. Service

The petitioner shall serve the motion to show cause and the order on respondent by personal service at least 7 days before the show cause hearing. MCR 3.708(B)(2). 9-1-01

3. Place for Filing Motion to Show Cause

MCR 3.708(A)(2) anticipates contempt proceedings may be brought in a court other than the issuing court. The court rules otherwise are silent regarding place for filing show cause.

- Consider violation of PPO as offense against issuing court. Therefore, whenever practicable motion to show cause should be filed with issuing court.
- Consider, however, exigent circumstances (e.g., danger to petitioner) and availability of witnesses regarding filing motion in the county of the violation. Court in county of violation could consult with issuing court regarding transfer of case to issuing court as in arrest situation.

K. Appearance or arraignment: advice to respondent (arrest or show cause)

At the respondent's first appearance before the circuit court, whether for arraignment under MCL 764.15b, enforcement under MCL 600.2950 or MCL 600.2950a or MCL 600.1701, or otherwise, (i.e., show cause) the court must do all of the following.

1. Advise respondent of the alleged violation. 9-1-01
2. Advise the respondent of the right to contest the charge at a contempt hearing.
3. Advise the respondent that he or she is entitled to a lawyer's assistance at the hearing and if the court determines that it might sentence the respondent to jail, that the court will appoint a lawyer at public expense if the respondent wants one and is financially unable to retain one.
4. If requested and appropriate, appoint a lawyer.
5. Set a reasonable bond pending a hearing of the alleged violation. (See also, MCL 764.15b(2)).
6. Take a guilty plea as provided in MCR 3.708(E) or schedule a hearing as provided in MCR 3.708(F). MCR 3.708(D).
7. Note: Due process requires that the person charged with contempt must be informed at the outset whether the proceedings involve criminal or civil contempt. In Re: Contempt of Rochlin, 186 Mich App 639, 649 (1990).

L. Scheduling a PPO Contempt Hearing/Bond Considerations. MRE 3.708F*

*(Note: It appears that this court rule applies regardless of whether the contempt proceeding is initiated by arrest or show cause.)

Following respondent's "appearance or arraignment," *the court shall* do the following:

1. **Set a date for the hearing** at the earliest practicable time except as required under MCL 764.15b. MCR 3.708(F)(1).
 - a) MCL 764.15b(2) provides that the circuit court must set a time certain for the hearing on the alleged violation within 72 hours *after arrest unless extended* by court on the motion of the arrested person or the prosecutor.

- b) Respondent in custody. The hearing of a respondent being held in custody for an alleged violation of a PPO *must be held within 72 hours after the arrest*, unless extended by the court on the motion of the arrested individual or the prosecuting attorney. MCR 3.708(F)(1)(a). 9-1-01
2. **Set a reasonable bond pending the hearing unless the court determines that release will not reasonably ensure the safety of the individuals named in the PPO.**
MCR 708(F)(1)(a). 9-1-01
- a) If respondent is released on bond pending the hearing, the bond may include any condition specified in MCR 6.106(D) necessary to reasonably ensure the safety of the individuals named in the PPO, including compliance with the PPO.
- b) The release order shall also comply with MCL 765.6b (bond orders to protect named individuals). MCL 3.708(F)(1)(b) 9-1-01
- Police officers are authorized to make warrantless arrests based upon reasonable cause to believe a person is violating or has violated a provision of a conditional release order entered under MCL 765.6b to protect named individuals. MCL 764.15e.
3. **Notify the prosecuting attorney** of a criminal contempt proceeding.
MCR 3.708(F)(2). (See also MCL 764.15b(2)(c), and MCL 764.15b(4)(b) requiring court to notify the prosecuting attorney of the *criminal contempt* proceeding, whether initiated by arrest or by show cause.)
4. **Notify the petitioner, and his or her attorney**, if any, of the contempt proceeding and *direct the party to appear* and give evidence on the charge of contempt.
MCR 3.708(F)(3). (See also MCL 764.15b(2)(d), and MCL 764.15b(4)(a) requiring court to notify petitioner, and petitioner's attorney of record, if any, and *direct the party to appear* at the hearing and give evidence on the contempt charge, whether initiated by arrest or by show cause.)

M. Prosecutor's Role in Contempt Proceedings

1. MCR 3.708(G) provides that in a *criminal contempt* proceeding commenced under MCL 764.15b, *after arrest*, the prosecuting attorney *shall* prosecute the contempt proceedings unless petitioner retains his or her own attorney for the criminal contempt proceeding.
2. MCL 764.15b(7) provides that the prosecuting attorney *shall* prosecute criminal contempt proceedings initiated by the court following arrest of the defendant *or initiated by a show cause order*,
 - a) unless the petitioner retains own attorney for the criminal contempt proceeding,
 - b) or the prosecuting attorney determines that the PPO was not violated or that it would not be in the interest of justice to prosecute the criminal contempt violation. MCL 764.15b(7).

3. Adjournment or dismissal on prosecutor's motion

- a) MCR 3.708(F)(1)(c) provides that if the alleged violation is based upon a criminal offense that is a basis for a separate criminal prosecution, upon motion of the prosecution, the court may postpone for the *outcome* of that prosecution. *Note: It appears that this court rule applies regardless of whether the contempt proceeding is initiated by arrest or show cause.
- b) MCL 764.15b(7), applicable to criminal contempt proceedings initiated by arrest or by show cause, provides that if the prosecutor prosecutes the criminal contempt proceeding, the court shall grant an *adjournment for not less than 14 days or a lesser period* requested if the prosecutor moves for an adjournment. If the prosecutor prosecutes the contempt proceeding, the court may *dismiss* the proceeding upon motion of the prosecutor for good cause shown.

N. No sanction for failure to comply with statutory time limits

MCL 764.15b(8) provides that a court shall not rescind a PPO, dismiss a contempt proceeding based on a PPO, or impose any other sanction for a failure to comply with a time limit prescribed in MCL 764.15b.

O. Guilty Pleas

The respondent may plead guilty to the violation. Before accepting a guilty plea, the court, speaking directly to the respondent and receiving the respondent's response, must:

1. Advise the respondent that by pleading guilty the respondent is giving up the right to a contested hearing and, if the respondent is proceeding without legal representation, the right to a lawyer's assistance as set forth in MCR 3.708(D)(3).
2. Advise the respondent of the maximum possible jail sentence for the violation.
3. Ascertain that the plea is understandingly, voluntarily, and knowingly made.
4. Establish factual support for a finding that the respondent is guilty of the alleged violation.

MCR 3.708(E).

P. PPO Contempt Hearings

1. Jury. There is no right to a jury trial. MCR 3.708(H)(1).
2. Conduct of the Hearing. The respondent has the right to be present at the hearing, to present evidence, and to examine and cross-examine witnesses. MCR 3.708(H)(2).
3. Evidence; Burden of Proof. The rules of evidence apply to both criminal and civil contempt proceedings. The petitioner or the prosecuting attorney has the burden of proving the respondent's guilt of criminal contempt beyond a reasonable doubt and the respondent's guilt of civil contempt by clear and convincing evidence. MCR 3.708(H)(3). 9-1-01
4. Judicial Findings. At the conclusion of the hearing, the court must find the facts specifically, state separately its conclusions of law, and direct entry of the appropriate judgment. The court must state its findings and conclusions on the record or in a written opinion made a part of the record. MCR 3.708(H)(4).
5. Double Jeopardy. See *State v. Johnson*, 676 So 2d 408 (Fla. Supreme Court 1996). The defendant was prosecuted for contempt for violating a protection order and for aggravated stalking on the basis of the same conduct. The Florida Supreme Court, applying the test of *Blockburger v U.S.*, 284 US 299, 52 S. Ct. 180 (1932), noted that aggravated stalking and criminal contempt for the protection order violation each require proof of an element that the other does not, and therefore prosecution for both offenses does not violate double jeopardy. See also *People v Coones*, 216 Mich App 721 (1996) in which the Michigan Court of Appeals held that the defendant's convictions for both aggravated stalking and criminal contempt for violation of a restraining order did not violate the double jeopardy clauses of the federal and state constitutions because the legislature intended cumulative punishment for the same conduct.

Q. Sentencing

1. If the respondent pleads or is found guilty of *criminal contempt*, the court *shall* impose a sentence of incarceration for no more than 93 days and *may* impose a fine of not more than \$500.00. MCR 3.708(H)(5)(a).

Compare statutory language: An individual who is 17 years of age or more and who refuses or fails to comply with a PPO is subject to the criminal contempt powers of the court and, if found guilty, *shall* be imprisoned for not more than 93 days and may be fined not more than \$500. MCL 600.2950(23); MCL 600.2950a(20).

- Past violation
- To vindicate court's authority
- Punitive

*Note: Because a PPO is also enforceable under MCL 600.1701 to MCL 600.1745 (see MCLA 600.2950(26) and 600.2950a(24)), arguably petitioner can be awarded damages for actual loss or injury caused by respondent's violation, even if defendant is found guilty of "criminal contempt." See MCL 600.1721.

2. If the respondent pleads or is found guilty of *civil contempt*, the court shall impose a fine or imprisonment as specified in MCL 600.1715 and MCL 600.1721. MCR 3.708(H)(5)(b).
 - Respondent in violation at time of proceeding
 - To bring respondent into compliance (e.g., respondent's failure or refusal to relinquish firearms or to return children to petitioner)
 - Coercive/compensatory
 - MCL 600.1721 provides for punishment by imprisonment until compliance with court order or inability to do so, a maximum \$250 fine, plus damages to injured party for actual losses
3. In addition to such a sentence, the court may impose other conditions to the personal protection order. MCR 3.708(H)(5)(b).
4. Probation: Not identified as sentencing option for PPO violation in statute or court rule.
5. Consider lethality. Violations require prompt, certain response from court. Petitioner may need safety planning referral. Criminal prosecution as additional protection.

R. Appeals concerning violation proceeding

1. Except as provided by MCR 3.709, appeals must comply with MCR 7.200. MCR 3.709(A).
2. Appeals Re: Contempt Hearing
 - a) The respondent has an appeal of right from a sentence for criminal contempt after a contested hearing. MCR 3.709(C)(1).
 - b) All other appeals concerning violation proceedings are by application for leave. MCR 3.709(C)(2).

IV. INTERSTATE ENFORCEMENT OF PPOs

The "Full Faith & Credit" provisions of Violence Against Women Act, 18 USC §2265, require all states and tribes to give full faith and credit to valid protection orders issued by all states and tribes. Such valid foreign protection orders are to be enforced as if they were the protection orders of the enforcing state or tribe.